**THE HON'BLE SRI JUSTICE BILAL NAZKI**

**AND**

**THE HON'BLE SRI JUSTICE G.CHANDRAIAH**

**WRIT PETITION No. 7369 of 2006**

17.04.2006

Between:

A.S.Sastry.

…Petitioner

And

The Chief Commissioner of Income Tax, Hyderabad-1 & others.

….Respondents.

**THE HON'BLE SRI JUSTICE BILAL NAZKI**

**AND**

**THE HON'BLE SRI JUSTICE G.CHANDRAIAH**

**WRIT PETITION No. 7369 of 2006**

**ORDER :** (Per Hon'ble Sri Justice Bilal Nazki)

This writ petition has been filed seeking a Writ of Mandamus declaring the charges framed vide Articles of Charge dated 28.6.2005 and appointment of Inquiry Officer by order dated 27.7.2005 as arbitrary and illegal. For the same purpose, an O.A.

being O.A.No.788 of 2005 is pending before the Central Administrative Tribunal and the petitioner contends that no orders were passed in his application for interim relief.

It appears that the Tribunal took up the matter on various occasions and wanted to consider the application for interim relief only after counter was filed by the respondents. On 26th of October 2005, the Tribunal passed the order. The relevant portion is given in the writ petition as under,

> "Counsel for the applicant however, pressed for interim relief on the ground that he is retiring on 30-11-2005 and in view of his clean record so far in service, he may not be driven to face the charge memo before retirement. This plea is not at all tenable in law, as the matter has to be viewed in accordance with the rules and procedures in conducting the enquiry. Though the counsel cited judgment of the Supreme Court, viz., AIR 1998 SC 1833 and 2005 (6) SCC 636, wherein charge memos were quashed on account of inordinate delay, this case, in our opinion, stands on a different footing as the delay, if at all, has been for a period of four years only, and for which the respondents side has to be heard in order to examine whether the delay is justified or not.
>
> In this view, we consider that an opportunity should be given to the respondents to furnish their reply. Two weeks time is granted for this purpose. The case be listed on 09-11-2005."

Thereafter, an application came to be filed for expedite hearing, which was disposed of on 20th of March 2006 with the following observations,

> "Heard learned counsel for the applicant. There are large number of matters pending prior to this matter and at this stage we are not inclined to grant early hearing in the

matter. The applicant may renew his request for expedite hearing after 3 months."

Obviously the petitioner had retired on 30th of November 2005 and there was no urgency to hear the matter on priority, as according to the Tribunal, there were hundreds of cases in the queue. In our view, even if the petition for interim relief had been heard, it could have not been granted as the charges are of serious nature and it can only be ascertained during an inquiry whether these charges are proved or not proved, or whether there has been delay in ordering an inquiry. These matters can be considered during the inquiry.

With the above observations, the writ petition is dismissed.

However, the learned counsel for petitioner has submitted that petitioner is entitled to pension after retirement, and during the pendency of inquiry. The respondents are directed to pass appropriate orders with regard to the pension of the petitioner within two weeks from today.

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(BILAL NAZKI, J)

17th April 2006

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(G.CHANDRAIAH,J)

ajr